

The Honorable Edward F. Shea

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEC 17 2001

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NUVEEN QUALITY INCOME  
MUNICIPAL FUND, INC., et al.,

Plaintiffs,

ASSET GUARANTY INSURANCE  
COMPANY,

Intervenor Plaintiff,

v.

PRUDENTIAL SECURITIES  
INCORPORATED, a Delaware  
corporation, et al.,

Defendants.

CITY OF SPOKANE,

Third-Party  
Plaintiff,

v.

ROY KOEGEN and ANNE KOEGEN, a  
marital community, and PERKINS COIE,  
LLP,

Third-Party  
Defendants.

No. CS-01-0127-EFS

ANSWER AND AFFIRMATIVE  
DEFENSES OF FOSTER PEPPER &  
SHEFELMAN PLLC TO COMPLAINT  
OF PLAINTIFF INTERVENOR

ANSWER TO PLAINTIFF INTERVENOR  
COMPLAINT - 1

**ORIGINAL**

BYRNES & KELLER LLP  
38TH FLOOR  
1000 SECOND AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 622-2000

1 I. ANSWER

2 Defendant Foster Pepper & Shefelman PLLC ("Foster Pepper") answers the  
3 Complaint in Intervention of Plaintiff Intervenor as follows:

4 1-5. Denies the allegations of paragraphs 1, 2, 3, 4 and 5 for lack of  
5 information or knowledge sufficient to form a belief as to their truth or falsity.

6 6. Admits the allegations of paragraph 6 that Foster Pepper is a Washington  
7 professional limited liability company engaged in the practice of law with principal  
8 offices in Seattle, Washington, but denies any other or different allegation therein.

9 7-17. Denies the allegations of paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and  
10 17 for lack of information or knowledge sufficient to form a belief as to their truth or  
11 falsity.

12 18. Incorporates by reference its answers to Plaintiffs' Complaint in answer  
13 to paragraph 18.

14 19-20. Denies the allegations of paragraphs 19 and 20 for lack of  
15 information or knowledge sufficient to form a belief as to their truth or falsity.

16 21-22. Denies the allegations of paragraphs 21 and 22 for lack of  
17 information or knowledge sufficient to form a belief as to their truth or falsity, except  
18 denies said allegations insofar as they pertain to Foster Pepper.

19 23-34. Denies the allegations of paragraphs 23, 24, 25, 26, 27, 28, 29, 30,  
20 31, 32, 33 and 34 for lack of information or knowledge sufficient to form a belief as to  
21 their truth or falsity.

22 35. Denies the allegations of paragraph 35, except admits that Foster Pepper  
23 provided certain legal services to Prudential in connection with the Bonds, admits that  
24 Foster Pepper issued an opinion letter to its client Prudential and admits that Foster  
25 Pepper allowed AGIC to have access to certain documents in its files pertaining to the  
26 Bonds.

1           36-40.       Denies the allegations of paragraphs 36, 37, 38, 39 and 40 for lack  
2 of information or knowledge sufficient to form a belief as to their truth or falsity.

3           41.       Denies the allegations of paragraph 41 for lack of information or  
4 knowledge sufficient to form a belief as to their truth or falsity, except admits that the  
5 City of Spokane retained Auble and Barrett to provide appraisals of the investment  
6 value of the Garage.

7           42.       Denies the allegations of paragraph 42 for lack of information or  
8 knowledge sufficient to form a belief as to their truth or falsity.

9           43.       Denies the allegations of paragraph 43 for lack of information or  
10 knowledge sufficient to form a belief as to their truth or falsity, except admits that the  
11 City of Spokane passed an Ordinance to facilitate issuance of the Bonds by obligating  
12 the City to provide certain loans to the Authority on the terms set forth in said  
13 Ordinance.

14           44.       Denies the allegations of paragraph 44 for lack of information or  
15 knowledge sufficient to form a belief as to their truth or falsity, except admits that the  
16 City of Spokane issued certain written opinions and warranties that the Ordinance was  
17 valid and binding and that the Official Statement accurately described the Ordinance  
18 and its effect.

19           45.       Denies the allegations of paragraph 45 for lack of information or  
20 knowledge sufficient to form a belief as to their truth or falsity, except admits that the  
21 City of Spokane caused its counsel to issue certain opinions in connection with the  
22 Bonds the contents of which are as stated in said opinions.

23           46-48.       Denies the allegations of paragraphs 46, 47 and 48 for lack of  
24 information or knowledge sufficient to form a belief as to their truth or falsity.

25           49.       Realleges and incorporates by reference its answers to paragraphs 1-48,  
26 supra, in answer to paragraph 49.

1           50-51.       Denies the allegations of paragraphs 50 and 51 for lack of  
2 information or knowledge sufficient to form a belief as to their truth or falsity, except  
3 denies said allegations insofar as they pertain to Foster Pepper.

4           52-54.       Denies the allegations of paragraph 52, 53 and 54 for lack of  
5 information or knowledge sufficient to form a belief as to their truth or falsity.

6           55.       Denies the allegations of paragraph 55 for lack of information or  
7 knowledge sufficient to form a belief as to their truth or falsity, except denies said  
8 allegations insofar as they pertain to Foster Pepper.

9           56.       Denies the allegations of paragraph 56 for lack of information or  
10 knowledge sufficient to form a belief as to their truth or falsity.

11          57.       Denies the allegations of paragraph 57 for lack of information or  
12 knowledge sufficient to form a belief as to their truth or falsity, except denies said  
13 allegations insofar as they pertain to Foster Pepper.

14          58.       Denies the allegations of paragraph 58 for lack of information or  
15 knowledge sufficient to form a belief as to their truth or falsity.

16          59.       Realleges and incorporates by reference herein its answers to paragraphs  
17 1-58, supra, in answer to paragraph 59.

18          60-61.       Denies the allegations of paragraphs 60 and 61 for lack of  
19 information or knowledge sufficient to form a belief as to their truth or falsity, except  
20 denies said allegations insofar as they pertain to Foster Pepper.

21          62.       Denies the allegations of paragraph 62 for lack of information or  
22 knowledge sufficient to form a belief as to their truth or falsity.

23          63-67.       Denies the allegations of paragraphs 63, 64, 65, 66 and 67 for lack  
24 of information or knowledge sufficient to form a belief as to their truth or falsity,  
25 except denies said allegations insofar as they pertain to Foster Pepper.

1           68.    Denies the allegations of paragraph 68 for lack of information or  
2 knowledge sufficient to form a belief as to their truth or falsity, except admits that  
3 Foster Pepper was retained by Prudential to provide certain legal services in  
4 connection with the Bonds which allowed access to the Official Statement or drafts  
5 thereof.

6           69-76.       Denies the allegations of paragraphs 69, 70, 71, 72, 73, 74, 75 and  
7 76 for lack of information or knowledge sufficient to form a belief as to their truth or  
8 falsity.

9           77.    Realleges and incorporates by reference its answers to paragraphs 1-76,  
10 supra, in answer to paragraph 77.

11           78-79.       Denies the allegations of paragraphs 78 and 79 for lack of  
12 information or knowledge sufficient to form a belief as to their truth or falsity, except  
13 denies said allegations insofar as they pertain to Foster Pepper.

14           80.    Denies the allegations of paragraph 80 for lack of information or  
15 knowledge sufficient to form a belief as to their truth or falsity.

16           81.    Denies the allegations of paragraph 81 for lack of information or  
17 knowledge sufficient to form a belief as to their truth or falsity, except denies said  
18 allegations insofar as they pertain to Foster Pepper.

19           82.    Denies the allegations of paragraph 82 for lack of information or  
20 knowledge sufficient to form a belief as to their truth or falsity.

21           83.    Realleges and incorporates by reference its answers to paragraphs 1-82,  
22 supra, in answer to paragraph 83.

23           84.    Denies the allegations of paragraph 84 for lack of information or  
24 knowledge sufficient to form a belief as to their truth or falsity, except denies said  
25 allegations insofar as they pertain to Foster Pepper.  
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1           85.   Denies the allegations of paragraph 85 for lack of information or  
2 knowledge sufficient to form a belief as to their truth or falsity, except denies said  
3 allegations insofar as they pertain to Foster Pepper.

4           86.   Denies the allegations of paragraph 86 for lack of information or  
5 knowledge sufficient to form a belief as to their truth or falsity.

6                               II. AFFIRMATIVE DEFENSES

7           BY WAY OF FURTHER ANSWER, AND AS AFFIRMATIVE DEFENSES  
8 Foster Pepper alleges as follows:

9           87.   Failure to State a Claim. The allegations of Plaintiffs' Complaint fail to  
10 state a claim against Foster Pepper.

11           88.   Statute of Limitations/Laches. The claims asserted by plaintiffs against  
12 Foster Pepper herein are barred by the applicable statutes of limitation and/or  
13 corresponding equitable doctrines such as laches.

14           89.   Reasonable Care. Insofar as Foster Pepper is alleged to have violated the  
15 Washington State Securities Act, it did not and could not have known the facts upon  
16 which any such violations are based by the exercise of reasonable care.

17           90.   Failure to Plead With Particularity. Plaintiffs fail to plead securities  
18 fraud and fraud against Foster Pepper with the requisite particularity.

19           91.   Contributory Fault. The damages allegedly suffered by plaintiffs were  
20 attributable in whole or in part to the fault of others, including that of the plaintiffs and  
21 each of the other named defendants.

22           92.   Lack of Standing. Plaintiff lacks standing to assert the claims herein.

23           93.   Lack of Justiciable Controversy. There is not yet a justiciable  
24 controversy between Foster Pepper and plaintiff.

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A. Entry of a final judgment dismissing plaintiffs' claims against Foster Pepper with prejudice and without an award of damages or other relief.

B. An award of its reasonable fees and expenses incurred herein, including a reasonable attorneys' fee.

C. Such other relief as the Court may deem just.

DATED this 12th day of December, 2001.

BYRNES & KELLER LLP

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 12<sup>th</sup> day of December 2001, a true copy of the foregoing pleading was served upon the following individuals via facsimile and U.S. Mail:

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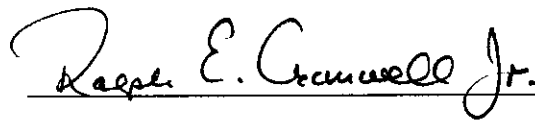
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